

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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LIBERTARIAN PARTY OF SOUTH \* CIV 15-4111  
DAKOTA; BOB NEWLAND; \*  
CONSTITUTION PARTY OF SOUTH \*  
DAKOTA; LORI STACEY, State \*  
Chair of the Constitution Party of \*  
South Dakota; JOY HOWE, Secretary of \*  
the Constitution Party of South Dakota; \*  
AARON AYLWARD, State Chair of the \*  
Libertarian Party of South Dakota; \*

Plaintiffs, \*  
vs. \* ORDER  
\*

SHANTEL KREBS, in her official \*  
Capacity as Secretary of State of \*  
State of South Dakota; and \*  
MARTY J. JACKLEY, in his official \*  
capacity as Attorney General \*  
of South Dakota, \*

Defendants. \*

\*\*\*\*\*

Defendants move to strike Plaintiffs' Reply Brief in Support of Plaintiffs' Motion for Attorneys' Fees, Doc. 162. The Defendants point out that D.S.D. Civ. LR 54.1C does not provide for a reply or responsive memorandum and Plaintiffs point out that this Rule does not prohibit such a reply. The Plaintiffs go on to argue that D.S.D. Civ. LR 7.1B provides that for every motion raising a question of law that the movant may file a reply brief within fourteen (14) days after the filing of a responsive brief.

In this case there are questions of law as well as of fact, so that the Court in fact anticipated a reply brief and waited to read any of the pleadings on this issue until a reply brief was filed. The reason was that it is the Court's practice to wait until all of the briefing is done before reading any

of the briefs.

Now that this issue has arisen, it could be that D.S.D. Civ. LR 54C could be more specific to except situations where there is also a question of law. It is the Court's view that D.S.D. Civ. LR 54.1C was created in contemplation for instance where it has already been ruled that attorney fees can be recovered and it is only a matter of determining the amount of attorney fees. As a result of the above, the Court denies Defendants' Motion to Strike.

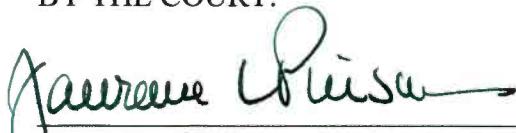
The Defendants moved in the alternative that with regard to what Defendants claim to be new material in the Plaintiffs' Reply Brief that Defendants be allowed a Surreply to those new matters. That portion of the Motion to Strike is granted and Defendants' Surreply shall be filed by September 17, 2018. Accordingly,

IT IS ORDERED:

1. That Defendants' Motion to Strike Plaintiffs' Reply Brief in Support of Motion for Attorneys' Fees is denied.
2. That Defendants' Alternative Motion to file a Surreply is granted and Defendants have until September 17, 2018, within which to file their Surreply to Plaintiffs' Reply Brief.

Dated this 13 day of September, 2018.

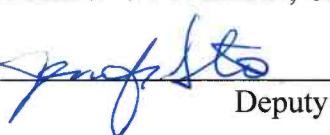
BY THE COURT:

  
\_\_\_\_\_  
Lawrence L. Piersol  
United States District Judge

ATTEST:

MATTHEW W. THELEN, CLERK

BY:

  
\_\_\_\_\_  
Deputy